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A 'McCarthy Era' Tactic in the Assassination Committee

By James Hamilton

WASHINGTON—The House Select Committee on Assassinations made a grandstand play last month that was reminiscent of the McCarthy era.

Having an indication beforehand that he would invoke his Fifth Amendment privilege against self-incrimination, the committee called the onetime head of gambling operations in Cuba and reputed Mafia chieftain Santos Trafficante Jr. to a public hearing and repeatedly—14 times—questioned him about any advance knowledge he may have had of the assassination of John F. Kennedy or plans to kill Fidel Castro. Each time, Mr. Trafficante refused to testify on constitutional grounds. (He is the only survivor among three underworld figures described in earlier Congressional testimony as being enlisted by the Central Intelligence Agency in 1969 to kill Mr. Castro.)

Mr. Trafficante's public assertion of his privilege in response to all 14 questions did result in heightened public curiosity and titillation. But if any legitimate legislative function was served by his public appearance, it is not apparent.

It seems, however, that some committee members were happy with the Trafficante display, perhaps hoping that it might save their trouble-plagued investigation from extinction by the full House. One committee member, Representative Robert W. Edgar, Democrat of Pennsylvania, reportedly suggested that a similar tactic be used again.

Such spectacles were commonplace during the loyalty investigations at midcentury. Individuals taking the Fifth Amendment to questions about Communist backgrounds were hauled forth to do so in public; those admitting past Communist connections were allowed to confess in private session. Senator William E. Jenner's Internal Security Subcommittee was particularly guilty of this abuse.

Compare the practice of Senator Sam J. Ervin's Watergate committee. Those claiming their privilege—for example, Charles W. Colson and G. Gordon Liddy—were allowed to do so privately. It would have been great theater, with the country spellbound by every Watergate event, to parade tough-guy Colson and the enigmatic Liddy before television cameras to let the world hear their refusals to testify. But no legislative purpose would have been served by such display.

Generally speaking, a legislative inquiry is justified only if it produces facts that help formulate legislative judgments or if it informs the public of shortcomings in government or other areas of society where there is a legitimate Federal interest. Clearly, to call to public session an individual a committee knows will take the Fifth promotes neither the lawmaking nor the informing function.

In many instances, the chief result is shame and stigma that may haunt a witness for many years. But punishment, as the United States Supreme Court has said, is not a proper goal of a legislative investigation (except in disciplinary proceedings for violation of Congressional rules). Congress is not generally empowered to conduct legislative trials.

Few tears have been shed for Mr. Trafficante. His past is unsavory and his lawyer, invoking a little-used House rule, exorcised the television cameras before Mr. Trafficante asserted his privilege. Moreover, according to several committee staff members, Mr. Trafficante did not ask to testify in private session and perhaps was overjoyed that the mob knew his lip was firmly buttoned. Better a little public opprobrium than an unscheduled trip to the ocean bottom.

Nonetheless, it is important, now that the assassination committee's mandate has been extended by the House, to call attention to this unjustified tactic. The committee's work is too important to have its investigations lapse into gimmickry.

Unless the committee demonstrates that it can conduct its inquiries with prudence and fairness — even where questionable individuals are involved — it will not regain the public esteem and confidence lost during the embarrassing bickering between its erstwhile chief counsel, Richard A. Sprague, and former chairman, Representative Henry B. Gonzalez.

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